State of Oklahoma, County of Oklahoma—ss.

William Earl Wiles, after being duly sworn upon
12 oath states, that he has read the foregoing bill and knows the contents thereof and that he verily believes the things contained therein are true.

WILLIAM EARL WILES.

Subscribed and sworn to before me this 21 day of January, 1931. (Seal) Glenn H. Grubb, Deputy Clerk U. S. District Court, Western District of Oklahoma.

Endorsed: Filed in District Court on Jan. 21, 1931.

Temporary Restraining Order.

And now on this 21 day of January, 1931, at 10 A.
13 M. this cause coming on to be heard on the motion of the plaintiff, for a temporary restraining order as prayed in said bill and plaintiff having exhibited the sworn bill to the Honorable Edgar S. Vaught, Judge of the United States District Court for the Western District of Oklahoma and the Court being fully advised in the premises and having heard read said bill:

It is ordered that a temporary restraining order issue out of this Court, commanding the said F. H. Reily from entering and trespassing on the Indian lands held in trust by the United States of America, more particularly described as the West one-half of the Northeast quarter of Section Nine (9) in Township Ten (10) North of Range Three (3) East, I. M., and particularly the West one-half thereof and also restraining the said defendant from cutting any inclosures situated on said property above described or plowing or committing any waste thereon and from aiding or abetting the doing of any such acts or things.

It is further ordered that the aforesaid temporary restraining order shall be full and binding upon said defendant named herein, from and after the service of this writ, by delivering a copy of this writ or by reading the same to him, and the service upon him respectively of the writ of subpoena herein.

It is further ordered that this cause be set down for hearing upon the application for a temporary injunction on the

31st day of January, 1931, 9 o'clock A. M. at the United States District Court room, Oklahoma City, Oklahoma, and the said defendant is hereby notified of said hearing and this temporary restraining order shall remain in full force and effect until said hearing and further order of this Court.

EDGAR S. VAUGHT, Judge.

United States Marshal's Return.

Received this writ at Oklahoma City January 23rd,
14 and executed same as follows, to-wit: By leaving a true copy of this writ with the within named F. H. *Riley* in person at Oklahoma City, January 23rd, 1931.

All done as within I am commanded.

RICHARD B. QUINN, U. S. Marshal,
By J. S. SMITH, Deputy.

Endorsed: Filed in District Court on Jan. 23, 1931.

Chancery Subpoena.

United States of America, Western District of Oklahoma—ss.

District Court of the United States of America, to F. H. Reily, Shawnee, Oklahoma, Greeting:

This is to command you and every of you, that you
15 appear before the Judge of the District Court of the United States of America for the Western District of Oklahoma, at the City of Oklahoma City, in said District, to answer the Bill of Complaint of United States of America, this day filed in the Clerk's office of said Court in said City of Oklahoma City to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the Western District of Oklahoma to Execute:

Witness, The Hon. Edgar S. Vaught, Judge of the District Court of the United States of America for the Western District of Oklahoma, at the City of Oklahoma City, in said

District, this 21st day of January, in the year of our Lord one thousand nine hundred and thirty-one.

THEODORE M. FILSON, Clerk.
By EULA LEE GREEVER, Deputy Clerk.

Memorandum.

The above-named defendant is notified that unless he files his answer or other defense in the Clerk's office of said Court, at the City of Oklahoma City aforesaid, on or before the twentieth day after service of the above writ (excluding the day of service), the Bill of Complaint may be taken pro confesso and a decree entered accordingly.

THEODORE M. FILSON, Clerk.
By EULA LEE GREEVER, Deputy Clerk.

U. S. Marshal's Return.

United States of America, Western District of Oklahoma—ss.

Received the within writ January the 23rd, 1931, and
16 executed the same by leaving a true copy of this writ with the within named F. H. *Riley* in person at Oklahoma City, Jan. 23, 1931.

RICHARD B. QUINN,
By J. S. SMITH, Deputy.

Endorsed: Filed Jan. 23, 1931. Theodore M. Filson, Clerk, By Eula Lee Greever, Deputy.

Answer and Motion to Dismiss.

Comes now F. H. Reily, defendant in the above
17 entitled cause, and for his answer and motion to dismiss said cause, and alleges as follows, to-wit:

1. That said defendant, reserving the right to object to the jurisdiction of the Court, denies all of the allegations set forth in paragraph one of said Bill of Complaint, except that the defendant admits that Wah-puck-we-che was a Mexican-Kickapoo Indian, and was allotted, by the United States Government, the West One-Half (W½) of the Northeast Quarter (NE¼) of Section Nine (9), Township Ten (10) North, Range Three (3) East, and he admits that Charles Eggers is Superintendent as alleged.

2. This defendant denies the right or authority, as alleged in paragraph three of said Bill of Complaint, of the plaintiff or any of its agents, to lease said land.

3. This defendant further shows that he did file, in the District Court of Pottawatomie County, a suit against the said J. T. Craig, Charles Eggers and Charles W. Edmeister, and did obtain a permanent injunction against them and each of them, from intererring with the defendant in his possession of the West One-Half (W½ of the West One-Half (W½) of said eighty (80) acres of land and that he admits the said defendants violated said injunction and that he caused a citation to be issued and served upon said J. T. Craig for violation of said injunction.

4. Further answering herein, said defendant shows
18 to the Court that is has no jurisdiction of this cause and cannot entertain this action for the following reasons, to-wit: That the said Wah-puck-we-che, the original allottee herein, prior to, the Act of The Congress, dated the 21st day of June, 1906, became a resident of the Republic of Mexico and took up her permanent residence in the said Republic of Mexico and lived there continuously until her death. That she died some time prior to the 20th day of May, 1930, the exact time this defendant cannot state. That while she was a resident of the Republic of Mexico, she affiliated with the Mexican-Kickapoo Indians as a member of said tribe.

This defendant further says that about the same time the said Wah-puck-we-che became a non-resident of the United States of America and established her residence in the Republic of Mexico, that the said Wa-pe-com-e also established his residence in the Republic of Mexico and became a citizen thereof. That the said Wa-pe-com-e was a member of the Mexican-Kickapoo Indian Tribe and that he also affiliated with said Tribe in the Republic of Mexico, and was a member thereof. That he was allotted, under certificate No. 42, the West One-half (W½) of the Southwest Quarter of Section Fourteen (14), Township Twelve (12), Range One (1) East, in Oklahoma County. That the said Wa-pe-com-e is about forty to forty-five years of age, and is an adult Indian. That the said Wa-pe-com-e was, and is, the sole and only heir of the said Wah-puck-we-che, deceased, and that no other per-

son or persons are, or were, interested in the estate of the said Wah-puck-we-che, or any of the lands that were allotted to her by the United States Government.

This defendant further says that on the 20th day of May, 1930, the said Wa-pe-com-e, joined by his wife Sah-nah-ka-moquah, for a good and valuable consideration, made, executed and delivered to this defendant, as the sole heir of Wah-puck-we-che, deceased, their Warranty Deed to the West One-half (W½) of the West One-half (W½) of the Northeast Quarter of Section Nine (9), Township Ten (10) North, Range Three (3) East, and that by reason of the execution of said deed the said defendant became, and is, the owner of said land and entitled to possession thereof, and the United States Government no longer, under and by virtue of the Act of June 21, 1906, had or held any jurisdiction over said land, and said land became unrestricted and by reason of the premises this court has no jurisdiction over said land or of this action.

5. This defendant further says that he filed an action in the Superior Court of Pottawatomie County, Oklahoma, a court of general jurisdiction, against the said Wa-pe-com-e and his said wife, same being No. 6589, and that due and legal service was obtained upon the said Wa-pe-com-e and his said wife, and that on the 20th day of December, 1930, the court, after due and full hearing, rendered a judgment in said cause, decreeing that this plaintiff was the owner of said land and found that said land was unrestricted and that the said Wa-pe-com-e had a good right to convey said land and quieted the title in this defendant.

That a copy of the warranty deed referred to above is hereto attached, marked Exhibit A and made a part hereof. A copy of the Journal Entry of Judgment is also hereto attached, marked Exhibit B and made a part hereof.

6. This defendant further says that the Honorable the Secretary of the Interior, by departmental construction, on January 6, 1926, held that land allotted to deceased members of tribes and Indians named in the Act of June 21, 1906, was unrestricted where the heir or heirs were adult members of said tribe and had been allotted land in their own right, in the following language:

"As to the removal of restrictions from inherited land it (meaning the United States Circuit Court) indicated that three things were necessary. First, that the deceased allottee was a member of the Tribes named in the Act. Second, that the heir was also an adult member; and third, that he had been allotted land in his own right."

The Honorable the Secretary of the Interior also stated in said communication under the ruling of the United States Circuit Court of Appeals that the restrictions were removed from land under such circumstances and this defendant says that under said departmental construction and under and by virtue of the law that the United States Government has no further jurisdiction over said land and that the title conveyed to him by the said Wa-pe-com-e, was a valid and legal title and that the judgment of the Superior Court of Pottawatomie County is final, conclusive and binding upon the said Wa-pe-com-e and the United States Government and that by reason of the facts and circumstances this Court has no jurisdiction over said land or over this defendant and that the said cause should be in all things dismissed, and the prayer of the complaint be denied.

7. This defendant further says that at the time he purchased said land that two members of the Tribe of Mexican Kickapoo Indians, to-wit, Tom Johnson and Ma-ka-se-ah, made, executed and delivered to him their affidavit, in writing, which was filed for record May 20, 1930, in Book 138 of the Miscellaneous Records of Pottawatomie County, at page 353. That this affidavit was made in the presence and hearing of the said Wa-pe-com-e and that said affidavit shows that they were well-acquainted with Wa-pe-com-e and his wife and with Wah-puck-we-che, and that in said affidavit it was shown that Wah-puck-we-che was a resident, at the time of her death, of the Republic of Mexico and that the said Wa-pe-com-e established his residence in the Republic of Mexico in the year 1906 and resided there continuously for a period of ten years and that he was the sole surviving heir of the said Wah-puck-we-che.

That a copy of said affidavit is hereto attached, marked Exhibit C and made a part hereof.

That on the 6th day of December, 1930, the said Tom Johnson and Ma-ka-se-ah, in the presence of a Notary Public, made a statement under oath, setting out all the facts and
21 circumstances in connection with the said Wah-puck-we-che and showing that she is dead and that she was allotted the above described land and showing that Wa-pe-com-e was her sole surviving heir. And further showing that she affiliated with the Mexican-Kickapoo Tribe of Indians while in Mexico and that she made a will in which she designated Wa-pe-com-e as her sole heir.

That a copy of said statement is hereto attached, marked Exhibit D and made a part hereof.

That this affidavit and these statements are attached to this Answer and Motion for the purpose of advising the court in this hearing of the exact status of these Indians and the right of Wa-pe-com-e to convey said land as hereinbefore set forth.

8. Defendant further says that all the matters and things concurred together that would confer upon the said Wa-pe-com-e the right to convey said land to this defendant under the departmental construction of said Act as aforesaid, and under the construction placed upon said Act by the United States Circuit Court of Appeals, and that by reason of the premises this Honorable Court should hold that said land was unrestricted and that the Court has no jurisdiction over same and the United States Government and its agents, and especially the Secretary of the Interior and the Commissioner of Indian Affairs, have no jurisdiction over said land and said cause should be in all things dismissed at the cost of the plaintiff.

Wherefore, having answered fully herein, this defendant prays that it be determined by this Court that the United States Government has no jurisdiction over said land and the same is unrestricted and that the said Wa-pe-com-e had good right to convey said land to this defendant and that the judgment rendered in the Superior Court of Pottawatomie County, Oklahoma, is final, binding and conclusive and that said cause be in all things dismissed and the prayer of the Com-
22 plaint be denied and that defendant recover all costs

in this behalf expended and all relief that he may show himself entitled to in the premises.

F. H. REILY, Defendant,
By GOODE, DIERKER & GOODE,
His Attorneys.

State of Oklahoma, Pottawatomie County—ss.

F. H. Reily, being duly sworn upon oath, says that he has read over the foregoing answer and motion to dismiss and knows the contents thereof and the statements and allegations therein contained are all true.

F. H. REILY.

Subscribed and sworn to before me this the 29th day of January, 1931. Lillian Hunt, Notary Public. My commission expires April 22, 1931.

Exhibit A.

Warranty Deed.

Know All Men by These Presents:

That we, Wah-pe-com-e sole surviving heir of Wah-
23 puck-we-che, deceased, who died a resident of Muzquiz Mexico and said Wah-pe-com-e, being a resident of the Republic of Mexico, State of Coahuila De Zaragoza, District of Monclova, City of Muzquiz, having an allotment of land in the State of Oklahoma, same allotted to me under allottment certificate No. 42 and known and described as the West One-half of the Southwest Quarter of Section Fourteen (14), Township Twelve (12), Range One (1) East, joined by his wife Sah-nah-ka-moquah, parties of the first part, in consideration of the sum of Fifteen Hundred ($1500.00) Dollars, and other good and valuable consideration in hand paid the receipt of which is hereby acknowledged does hereby grant, bargain, sell and convey unto F. H. Reily of Pottawatomie County, State of Oklahoma, party of the second part the following described real property and premises situated in Pottawatomie County, State of Oklahoma, to-wit:

The West One-half (W½) of the West One-Half (W½) of the Northeast Quarter (NE¼) of Section Nine (9), Township Ten (10) North, Range Three

(3) East of the Indian Meridian, same not being a homestead and containing forty (40) acres, more or less, and being a portion of the land allotted to Wah-puck-we-che No. 225 Mexican-Kickapoo Indian who is now deceased, having died in the year 1929, intestate, leaving the said Wah-pe-com-e as her sole and only heir, and being a resident in good faith at the time of her death of the Republic of Mexico and a non-resident of the State of Oklahoma,

together with all the improvements thereon and the appurtenances thereunto belonging and warrant the title to the same.

To have and to hold said described premises unto the said party of the second part, his heirs and assigns forever free, clear and discharged of and from all former grants, charges, taxes, judgments, mortgages and other liens and incumbrances of whatsoever nature.

Signed and delivered this 20th day of May, 1930.

WAH-PE-COM-E
(His X Mark),
SAH-NAH-KA-MOQUAH
(Her X Mark).

The names of Wah-pe-com-e and Sah-nah-ka-moquah, written by Tom Johnson at their request and in the presence of Tom Johnson and Ma-ka-seah, as witnesses; Tom Johnson, Ma-ka-se-ah.

State of Oklahoma, Pottawatomie County—ss.

Before me, the undersigned, a Notary Public in and for said County and State, on this 20th day of May, 1930, personally appeared Wah-pe-com-e and Sah-nah-ka-moquah, husband and wife to me known to be the identical persons who executed the within and foregoing instrument by their mark in my presence and in the presence of Tom Johnson and Ma-ka-se-ah, as witnesses and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

In witness whereof I have hereunto set my hand and official seal the day and year last above written. Lillian Hunt, Notary Public. My commission expires April 22, 1931. (Seal)

Filed for record May 20, 1930, at 3:30 o'clock p. m., and duly recorded in Book 127 of Deeds, on page 343.

Exhibit B.

State of Oklahoma, Pottawatomie County—ss.

In The Superior Court Thereof.

F. H. Reily, Plaintiff, vs. Wa-pe-com-e and Sah-nah-ka-moquah, Defendants. No. 6589.

Journal Entry of Judgment.

Now on this the 20th day of December, 1930, the
24 court being in due and lawful session and the above entitled cause coming on for hearing and the plaintiff appearing in person, and the defendants and each of them having been duly and legally served with summons personally and failing to answer, demur or otherwise plead in said action are hereby adjudged in default.

Thereupon the plaintiff waived a jury and submitted the issues of law and fact to the court, and the court being fully advised from the evidence in said cause, finds that Wah-puck-we-che was a member of the Mexican-Kickapoo tribe of Indians and was enrolled as No. 225. That she was allotted, by the United States Government, the West One-half of the Northeast Quarter of Section Nine, Township Ten North, Range Three East of the Indian Meridian, containing eighty acres more or less, and located in Pottawatomie County, Oklahoma.

The court further finds that the said Wah-puck-we-che became a citizen of the Republic of Mexico, and a non-resident of the United States of America prior to the 21st day of June, 1906, and continued as a resident of the Republic of Mexico from that date until the time of her death and that while in the Republic of Mexico she associated with and affiliated with the Mexican-Kickapoo Indians residing in the Republic of Mexico.

The court further finds that the said Wah-puck-we-che is dead, having died at a period exceeding three years prior to the filing of the petition herein, intestate, and that no administration proceeding has ever been had upon her estate and no court, having jurisdiction has ever determined who were her heirs, or entitled to a distributive share of her said estate.

The court further finds that at the time of her death she was seized and possessed of the above described land.

The court further finds from the evidence that the said Wah-puck-we-che left as her sole surviving heir, her son, Wah-pe-com-e and that no other person or persons was, or were, entitled to inherit the land belonging to the said Wah-puck-we-che that she died seized and possessed of, and that upon her death the land descended to and became vested in her son, Wah-pe-com-e.

The court further finds that the said Wah-pe-com-e was allotted, by the United States Government, by certificate No. 12, the West Half of the Southwest Quarter of Section Fourteen, Township Twelve, Range One East and the court further finds from the evidence that the said Wah-pe-com-e was a full-blood Mexican Kickapoo Indian and that on and prior to June 21, 1906, he removed from the United States of America and became a resident of the Republic of Mexico and that he affiliated with said tribe of Mexican-Kickapoo Indians residing in the Republic of Mexico.

The Court further finds that upon the death of the
25 said Wah-puck-we-che, that under and by provision of an act of the Congress of June 21, 1906, the allottment of the said Wah-puck-we-che was no longer restricted and that the said Wah-pe-com-e had a good right to sell said land and that the United States Government no longer had jurisdiction over said land, or any right to prevent the said Wah-pe-com-e from selling same, or disposing of it as to him might seem proper.

The Court further finds that on the 20th day of May, 1930, the plaintiff purchased from the said Wah-pe-com-e, for a good and valuable consideration, the West One-half of the West One-half of the Northeast Quarter of Section Nine, Township Ten North, Range Three East of the Indian Meridian, located in Pottawatomie County, Oklahoma, and paid him a good, lawful and valuable consideration thereof, and went into actual and peaceable possession of said property and is now in possession thereof and that the said Wah-pe-com-e joined by his wife, Sah-nah-ka-moquah, on said date, conveyed said land to this plaintiff by a lawful, valid and subsisting general warranty deed, and that said deed has been placed of record in the Office of the County Clerk of Pottawatomie County, Oklahoma.

The court further finds that by reason of the evidence introduced in said cause that the United States Government has no control over said land, or right to direct any of the

acts of the said Wah-pe-com-e in connection with said land by reason of the removal of the restriction thereof, as provided under the act of the Congress of June 21, 1906.

The court further finds that the prayer of the petition should be in all things taken as true and that the plaintiff is entitled to the relief prayed for therein.

It is therefore ordered, adjudged and decreed by the court that the title to the following described land, is hereby quieted in the said plaintiff:

The West One-half (W½) of the West One-half (W½) of the Northeast Quarter (NE¼) of Section Nine (9), Township Ten (10) North, Range Three (3) East of the I. M., located in Pottawatomie County.

It is further ordered, adjudged and decreed by the court that all of the right, title, interest, estate and equity of the said Wah-pe-com-e and the said Sah-nah-ka-moquah, be, and the same is hereby divested out of the said defendants and vested in the said plaintiff and that the said defendants and each of them and all persons claiming by, through or under them are hereby forever enjoined and restrained from asserting any title, estate or equity in or to said land or any part thereof.

(Signed) LEANDER G. PITMAN, Judge.

Certificate of True Copy.

State of Oklahoma, Pottawatomie County—ss.

I, Mabel Marlatt, Court Clerk in and for said County and State, do hereby certify the attached to be a full, true and correct copy of the original Journal Entry of Judgment now on file and of record in the matter of the F. H. Reily v. Wah-pe-com-e, Case No. 6589 in the office of the Court Clerk, Sup. Court, Shawnee, Oklahoma.

In witness whereof, I hereunto affix my hand and the seal of said Court this the 30th day of Jan., 1931. Mabel Marlatt, Court Clerk, by Ethel W. Malone, Deputy.

Exhibit C.

State of Oklahoma, Pottawatomie County—ss.

Affidavit.

Tom Johnson and Ma-ka-se-ah, being duly sworn upon oath say that they are Mexican-Kickapoo Indians. That we are well acquainted with Wah-pe-com-e and his wife Sah-nah-ka-moquah. That we were also well acquainted with Wah-puck-we-che, mother of Wah-pe-com-e, during her life-time. To our personal knowledge Wah-puck-we-che is dead, she being at the time of her death, a resident of Muzquiz, Mexico, and a non-resident of the State of Oklahoma.

We also know where Wah-pe-com-e and his said wife reside. We know that Wah-pa-com-e established his residence in the Republic of Mexico in the year 1906, and that he resided in Mexico from that time continuously for a period of more than ten years. That the said Wah-pe-com-e is the sole and only heir of the said Wah-puck-we-che. Wah-puck-we-che only had one child who is Wah-pe-com-e, and therefore he is the sole and only surviving heir of the said Wah-puck-we-che.

We further state that we were well acquainted with the said Wah-puck-we-che, and are also well acquainted with Wah-pe-com-e and have known them for a great many years.

This affidavit is made for the purpose of identifying the said Wah-pe-com-e as the heir of Wah-puck-we-che and for advice concerning his right to make a deed to the West Half of the West Half of the Northeast Quarter of Section Nine (9), Township Ten (10), Range Three East in Pottawatomie County, Oklahoma, as the sole surviving heir of Wah-puck-we-che, his mother.

(Signed) TOM JOHNSON,
MA-KA-SE-AH.

Subscribed and sworn to before me this the 20th day of May 19, 1930. Lillian Hunt, Notary Public. My commission expires April 22, 1931. (Seal)

Filed for record May 20, 1930, at 3:40 o'clock p. m., and duly recorded in Book 138 of Miscellaneous, on page 353.

Exhibit D.

State of Oklahoma, Pottawatomie County—ss.

Statement Under Oath, Made by Ma-ka-se-ah and Tom Johnson Members of The Kickapoo Tribe of Indians, in the Matter of the Death and Proof of Heirship to the Estate
27 of Wah-puck-we-che, Deceased, a Mexican Kickapoo Indian, of the Shawnee Indian Agency at Shawnee, Oklahoma, in the Office of F. H. Reily, and before Lillian Hunt, a Notary Public in and for Pottawatomie County, Oklahoma.

Q. State your name, age and place of residence.

A. Ma-ka-se-ah. Forty-eight years old, reside in Pottawatomie County.

Q. Did you know Wah-puck-we-che, a member of the Kickapoo Tribe of Indians?

A. Yes.

Q. Is she living or dead?

A. She is dead.

Q. Do you know about when she died?

A. About two years ago.

Q. Did Wah-puck-we-che have an allottment of land alloted to her by the Government?

A. Yes.

Q. Where was it located?

A. The West Half of the Northeast Quarter of Section Nine, Township Ten, Range Three East of the Indian Meridian.

Q. Was Wah-puck-we-che married at the time of her death?

A. No.

Q. Had she been married at any time?

A. Yes.

Q. How many children did she have by the first marriage?

A. Had two children.

Q. A boy or girl?

A. One boy and one girl.

Q. Of the second marriage?

A. Just one boy.

Q. What was the name of the boy by the second marriage?

A. Wah-pe-com-e.

Q. Are the children by her first marriage living or dead?

A. Dead.

Q. About how many years ago did they die?

A. Girl died thirty-two year ago.

Q. Boy?

A. He died about thirty years ago.

Q. Was this boy and girl by the first marriage, were they ever married?

A. No. Girl died when she was sixteen years old. The boy about twenty-five.

Q. About how old is Wah-pe-com-e, the only son of Wah-puck-we-che?

A. About thirty-nine.

Q. Did Wah-puck-we-che's husbands die before she died?

A. Yes.

Q. Did Wah-puck-we-che ever live in Old Mexico?

A. Yes.

Q. Do you know about when she went to Old Mexico?

A. About 1903.

Q. How long did she stay down there??

A. She was making her home there at the time she died.

Q. Did Wa-pe-com-e ever live in Old Mexico?

A. Yes.

Q. He went down there and lived with his mother?

A. Yes.

Q. Did Wah-puck-we-che and Wah-pe-com-e affiliate
28 with the Mexican Kickapoo Tribe of Indians while there?

A. Yes.

Q. Did she have any children or grand children at the time of her death, other than Wah-pe-com-é?

A. The only grand child she had was the child of Wah-pe-com-e.

Q. Do you know who her sole heir was at the time she died?

A. Yes.

Q. Who was it?

A. Wa-pe-com-e.

Q. Did you ever talk with Wah-pe-com-e about his mother making a will at the Agency?

A. Yes.

Q. Who did he say the will was made to?

A. Wa-pe-com-e.

Q. Do you know where this will was ever approved by the Secretary of the Interior?

A. No.

Q. Did Wah-pe-com-e tell you where his mother's will was made?

A. Yes. At the Indian Agency.

Q. Did you ever talk with Wah-pe-com-e about how many heirs his mother left?

A. Yes.

Q. Who did he say was the only heir?

A. Wa-pe-com-e.

Q. Have you any financial interest in the land that was allotted to Wah-puck-we-che and inherited by Wah-pe-com-e?

A. No.

(Signed) MA-KA-SE-AH.

Subscribed and sworn to before me this the 6th day of December, 1930. Lillian Hunt, Notary Public. My commission expires April 22, 1931. (Seal)

I, Tom Johnson, being duly sworn upon oath say that I am a member of the Kickapoo tribe of Indians and that I was present at the time the above statement was made by Ma-ka-se-ah and I know the contents thereof and the statements therein contained are true.

(Signed) TOM JOHNSON.

Subscribed and sworn to before me this the 6th day of December, 1930. Lillian Hunt, Notary Public. My commission expires April 22, 1931. (Seal)

Endorsed: Filed in District Court on Jan. 31, 1931.

(Order denying temporary injunction and setting case for final hearing.)

[Before Judge Vaught.]

On this 31st day of January, 1931, the complainant
29 appears by W. E. Wiles, Esq., Assistant United States Attorney, and the defendant in person and by Mark Goode, Esq., his attorney. Thereupon, application of the complainant for temporary injunction comes on for hearing, and the Court being duly advised, it is ordered that said application be and the same is denied and exceptions allowed the complainant, and this cause is assigned for final hearing in Federal Court Room at Oklahoma City, Oklahoma, on February 25, 1931. at 9:30 a. m.

Decree.

This cause came on to be heard at this term and
30 was argued by counsel, and thereupon the following findings of fact and conclusions of law were made and entered:

Findings of Fact.

1. The court finds that the West One-half (W½) of the Northeast Quarter (NE¼) of Section Nine (9), Township Ten (10), Range Three (3) East of the Indian Meridian, containing eighty (80) acres more or less, located in Pottawatomie County, Oklahoma, was allotted to Wah-puck-we-

che, as a member of the Kickapoo Tribe of Indians and that her allotment number was 225.

2. That the said allottee died in January, 1929, and left as her sole and only heir, Wa-pe-com-e, her son, and the said Wa-pe-com-e inherited said land.

3. That said Wah-puck-we-che and Wa-pe-com-e left Oklahoma and went to Old Mexico in the year 1903 and each of said persons were adults and resided there many years and after the passage of the act of June 21, 1906. That each of said Indians became non-residents of the United States within the meaning and perview of the Act of June 21, 1906.

That the said Wah-puck-we-che returned to the United States in the year 1927 and died in Oklahoma, but was a resident of Old Mexico at the date of her death.

4. That the said Wa-pe-com-e returned to the United States about the year 1920 and has resided in the United States since said date. That the said Wa-pe-com-e as the sole heir of Wah-puck-we-che deceased, conveyed the West One-half (W½) of the West One-half of the Northeast Quarter (NE¼) of Section Nine (9), Township Ten (10) North, Range Three (3) East of the Indian Meridian, containing forty (40) acres, by warranty deed dated the 20th day of May, 1930.

That Charles Eggers, United States Superintendent
31 of the Shawnee Agency, entered into an agricultural lease with J. T. Craig on the 8th day of October, 1930, leasing said land on behalf of the undetermined heirs of the said Wah-puck-we-che, for the year 1931. That the said F. H. Reily filed suit in the District Court of Pottawatomie County, and obtained a permanent injunction against the said J. T. Craig, Charles Eggers, United States Superintendent, and Charles W. Edmeister, United States Indian Farmer, restraining and enjoining them from interferring with the said Reily's possession in and to said forty acres of land.

That thereafter he filed suit in the Superior Court of Pottawatomie County and obtained a judgment quieting his title in and to said land against any claims of the said Wa-pe-com-e. That thereafter this suit was brought in this court to restrain the said Reily and his tenants from occupying said land or interferring with the use and occupation thereof.

Conclusions of Law.

1. The court finds as a matter of law that neither of the judgments rendered in the State court and plead by the said F. H. Reily, or the proceedings had there are barred by this action, or in any way prevent this court from entertaining this suit.

2. That upon the death of Wah-puck-we-che the said Wa-pe-com-e became vested with full power and right to convey any and all of said land and to pass good title thereto, free, clear and discharged of and from any supervision and control by the United States, and the conveyance made by the said Wa-pe-com-e to F. H. Reily, conveyed good title to the West One-half of the West One-half of the Northeast Quarter of Section Nine, Township Ten North, Range Three East of the Indian Meridian.

It is therefore by the Court, considered, ordered and adjudged, that the plaintiff and those for and on whose behalf this action was brought, have no right, title, interest or claim in or to said land or any part thereof, and that this
32 bill be dismissed. Exceptions allowed the complainant.

COLIN NEBLETT, Judge.

Endorsed: Filed in District Court on Feb. 25, 1931.

(Citation in proper form, directed to appellee, with acceptance of service by counsel for said appellee, was filed in the District Court on June 1, 1931.)

Notice of Appeal.

Defendant in the above entitled cause is hereby noti-
2 fied that the plaintiff herein appeals from the decision of the Court as entered on the 25th day of February, 1931; said appeal to be to the United States Court of Appeals for the Tenth Circuit in accordance with the citation as issued in this cause on the 22nd day of May, 1931.

ROY ST. LEWIS,
United States Attorney,

WILLIAM EARL WILES,
Assistant United States Attorney,
Attorneys for Plaintiff.

Service of the above notice of appeal accepted this 26th day of May, 1931.

MARK GOODE,
CHAS. E. DIERKER,
JOHN L. GOODE,
Attorneys for Defendant.

Endorsed: Filed in District Court on June 1, 1931.

(Omitted: Orders of July 1, 1931; Aug. 26, 1931;
8 Oct. 16, 1931; Nov. 13, 1931; and Dec. 19, 1931, each extending time within which to docket appeal.)

Order.

It is this day ordered, for good cause shown, that the time in which the said appellant may docket said case and file a transcript of the record herein, in the United States Circuit Court of Appeals, be and the same is extended to February 22, 1932.

January 20, 1932.
1192 Eq.

EDGAR S. VAUGHT,
U. S. District Judge.

Endorsed: Filed January 20, 1932, Theodore M. Filson, Clerk, by Glenn H. Grubb, Deputy.

Order.

It is this day ordered, for good cause shown, that
33 the time in which the plaintiff may file its bill of exceptions herein be and the same is extended to September 13, 1931.

July 1, 1931.

EDGAR S. VAUGHT,
U. S. District Judge.

Endorsed: Filed July 1, 1931. Theodore M. Filson, Clerk, by Grace G. Butler, Deputy.

Order.

It is this day ordered, for good cause shown, that
34 the time in which the plaintiff may file its bill of exceptions herein be and the same is extended to November 3, 1931.

September 12, 1931.

EDGAR S. VAUGHT,
U. S. District Judge.

Endorsed: Filed Sept. 12, 1931. Theodore M. Filson, Clerk, by Glenn H. Grubb, Deputy.

Order.

It is this day ordered, for good cause shown, that
35 the time in which the plaintiff may file its bill of exceptions and narrative statement of the evidence herein be and the same is extended to November 20, 1931.

October 16, 1931.

EDGAR S. VAUGHT,
U. S. District Judge.

Endorsed: Filed in District Court on Oct. 16, 1931.

Order.

It is this day ordered, for good cause shown, that
36 the time in which the plaintiff may file its bill of exceptions and narrative statement of the evidence herein be and the same is extended to December 22, 1931.

November 13, 1931.

EDGAR S. VAUGHT,
United States District Judge.

Endorsed: Filed in District Court on Nov. 13, 1931.

Order.

It is this day ordered, for good cause shown, that
37 the time in which the plaintiff may file its bill of exceptions and narrative statement of the evidence herein be and the same is extended to January 22, 1932.

December 19, 1931.

EDGAR S. VAUGHT,
United States District Judge.

Endorsed: Filed in District Court on Dec. 19, 1931.

NARRATIVE STATEMENT OF THE EVIDENCE.

Before Hon. Colin Neblett, Judge.

Appearances: For the United States, William Earl
38 Wiles, Assistant United States Attorney. For the Defendant, Messrs. Goode, Dierke & Goode, by Mr. Mark Goode.

It was stipulated in open Court as follows:

It is stipulated and agreed that the land involved in this controversy was allotted to Wah-puck-we-che, a Kickapoo allottee, and that they are located in Pottawatomie County, Oklahoma, and that the said Wah-puck-we-che went to Mexico about the year 1903, and resided there continuously until about the year 1927, which year she returned to Oklahoma and died in Oklahoma and was buried in Oklahoma. That Wah-puck-we-che had one child, one son, Wa-pe-com-e, the grantor in the deed to F. H. Reily, involved in this action. That Wa-pe-com-e is an adult Kickapoo and that he received an allotment in his own right in Oklahoma as such Kickapoo; that he went to Mexico with his mother about the year 1903, and resided in said country continuously until about ten (10) or twelve (12) years ago, and he is now in the United States, and was here at the time said deed was executed.

Plaintiff's Exhibit A, being the original trust patent to the lands embracing the lands involved in this action, was offered and received in evidence, without objection, said ex-
39 hibit being as follows:

4-457a.

The United States of America.

To all to whom these Presents shall come, Greeting:

Whereas, there has been deposited in the General Land Office of the United States a schedule of allotments of land, dated June 18, 1894, from the Acting Commissioner of Indian Affairs, approved by the Acting Secretary of the Interior September 12, 1894, whereby it appears that in conformity with the agreement with the Kickapoo Indians in Oklahoma Territory, ratified and confirmed by the Act of Congress approved March 3, 1893 (27 Stats. 557), Wah-puck-we-che, an Indian on the Kickapoo Reservation in Oklahoma Territory has been allotted the following described land, viz:

The West Half of the Northeast Quarter of Section Nine in Township Ten North of Range Three East of Indian Meridian in Oklahoma Territory containing eighty acres.

Now, know ye, that the United States of America, in consideration of the premises and in accordance with the provisions of said agreement and of the fifth section of the Act of Congress of the 8th February, 1887, hereby declares that it does and will hold the land thus allotted (subject to all the restrictions and conditions contained in said fifth section) for the period of twenty-five years, in trust for the sole use and benefit of the said Wah-puck-we-che, or in case of her decease, for the sole use of her heirs, according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or her heirs, as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: provided, that the President of the United States may, in his discretion, extend the said period.

In testimony whereof, I, Grover Cleveland, President of the United States of America, have caused these letters to be made Patent and the seal of the General Land Office
40 to be hereunto affixed.

Given under my hand at the City of Washingtno, this sixth day of October, in the year of our Lord one thou-

sand eight hundred and ninety-four, and of the Independence of the United States the one hundred and nineteenth.

By the President:

(Seal)

GROVER CLEVELAND,
By M. McKEAN, Secretary,
L. T. C. LAMAR,
Recorder of the General Land Office.

Recorded Vol. 35, p. 210.
(12695-10M.) 6-400

Plaintiff offered in evidence Exhibit B, being certified copy of Presidential orders extending the trust period on Kickapoo lands for a period of five years from February 27, 1919, and ten years from June 19, 1924, which offer was objected to and overruled by the Court, and said Exhibit B was received in evidence, and omitting certificate is as follows:

File 18455/19

Executive Order.

It is hereby ordered under authority contained in Section 5 of the Act of February 8, 1887 (24 Stat. L., 388), that the trust period on allotments made to the Mexican-Kickapoo Indians in Oklahoma, which trust expires during the calendar year one thousand nine hundred and twenty-four, be and is hereby extended for a period of ten years.

CALVIN COOLIDGE.

The White House, June 19, 1924.

(No. 4029.)

Office of Indian Affairs. Received March 11, 1919. 21432.

Executive Order.

It is hereby ordered under authority contained in Sec-
41 tion Five of the Act of February 8, 1887 (24 Stat. L., 388), that the trust period on allotments made to the Mexican-Kickapoo Indians in Oklahoma, which trust expires during the calendar year one thousand nine hundred and nineteen, be and is hereby extended for a period of five years.

WOODROW WILSON.

The White House, 27 February, 1919.

(No. 3047.)

Testimony of J. A. Phifer, for plaintiff. J. A. Phifer, called on behalf of plaintiff, duly sworn, testifies:

Direct Examination.

I hold the official position of Senior Clerk in the office of the Shawnee Indian Agency. We leased the lands in controversy to Mr. Craig. Exhibit C is an agricultural lease. It is a copy of the lease made to Mr. Craig on October 18, 1930, and approved by the superintendent. The original of the lease is filed with the General Accounting office at Washington, and this copy above referred to is retained in our office.

Plaintiff then offered Exhibit C, being the copy of the agricultural lease aforesaid, in evidence, and which is admitted by the Court and received in evidence, over the objection of defendant as follows:

Mr. Goode: We object, it is incompetent, irrelevant and immaterial, and for the further reason that it has not been properly predicated, it is not the regular departmental lease, is not made under rules and regulations of the Secretary of Interior, it shows on its face that it is a lease executed
42 by Craig and Charles Eggers, superintendent and acting for the undetermined heirs of Wah-puck-we-che. No authority for any such lease as that. There is a regulation under the leasing statute that authorizes an Indian Agent to lease Indian lands and sign the lease for minor heirs, but there is no regulations except this in existence, and I make this statement advisably, as to this the Land Department merely acts in an advisory capacity for the Indian where he has been non-resident in Mexico. Their records show when he was down there, the agent makes its power of attorney and executes the lease as in this case.

The Court: Objection will be overruled. It will be admitted.

I don't know whether or not Mr. Craig took possession of the land under that lease or went into possession of the land. Exhibit D is the rules and procedure prescribed by the Secretary of the Interior for determining heirs and for approving wills of deceased allottees.

Upon Exhibit D being offered in evidence by plaintiff, counsel for defendant in open Court stated: "We admit, if the

Court please, th[illegible] the sale jurisdiction is in the Secretary of the Interior to determine the heirs of deceased allottees where lands are held in trust."

Our records show Wah-puck-we-che died January 29, 1929. Her heirs have not been determined by the Secretary of the Interior.

Cross-Examination.

Do not know as a fact that Wa-pe-com-e is the sole heir. Since Wah-puck-we-che's death we have placed the rental money to the account of the estate of Wah-puck-we-che. We have paid some of it to Wa-pe-com-e. Don't know that Wa-pe-com-e is her only relative. We have Wah-puck-we-che's will. We have had the will ever since she made it. The will is dated March 12, 1926. I have seen the will before today. I am satisfied Wa-pe-com-e is the heir, but the secretary is the one to say. It is my opinion Wa-pe-com-e will be the heir, but he is not the heir until this is approved according to the regulations. I don't know who had possession of this land in 1930. We don't have a lease for 1930. Wa-pe-com-e in 1930 started to lease the land but it was not completed. After 1930 Mr. Eggers made a lease for 1931 with Wa-pe-com-e's consent. I did not know Wa-pe-com-e had leased the land to Easman for 1931. He did not tell me and I did not ask him. Since 1923 the superintendent is authorized to lease restricted Indian land, deceased Indian where the heirs are undetermined without the consent—this authority is in the leasing regulations. We have paid Wa-pe-com-e less than $100.00. That was since his mother died in 1929. That must have been for last part of 1929 rental. It may have accumulated from her leasing with the approval of the superintendent. In 1930 we didn't make any lease. January 1, 1931, we collected half the rent. We have authority from the secretary to pay to anybody. We do not hold the money available whenever the heirs are undetermined.

Redirect Examination.

Wah-puck-we-che made a will in 1926 and it has been in our office ever since. It has not been approved by the secretary. It has not been submitted within one year of the death of Wah-puck-we-che in 1929 for approval.

Plaintiff's Exhibit C, the agricultural lease above referred

to and admitted in evidence, being a lease in regular printed form as used by the Indian Agency, was lease #6720, Tribe Mexican Kickapoo, and allotment #225, and was executed by the superintendent acting for and on behalf of the undetermined heirs of Wah-puck-we-che, deceased, to Jake F. Craig for lands described as follows: Except East of ditch and North of railroad about twelve (12) acres and team in pasture of West Half (W½) of Northeast Quarter (NE¼)-9-10 North, Range East Indian Meridian containing Sixty-eight (68) acres, more or less, for the term of one year, beginning January 1, 1931, and ending December 31, 1931, for an annual rental of one hundred fifty dollars ($150.00) payable semi-annually on January 1, 1931, and July 1, 1931. The lease was accepted by Wa-pe-com-e on October 3, 1930, and signed and executed by all parties on October 18, 1930,
44 and approved by Charles Eggers, the Superintendent, on that date. The fact of the lease and its terms are not in dispute and we make the above condensed statement concerning it rather than copying the same at length herein, as the lease if set out in full would unduly lengthen this record.

Testimony of J. F. Craig, for plaintiff. J. F. Craig called on behalf of plaintiff, duly sworn, testifies:

Direct Examination.

I am the J. F. Craig named in the lease in question. I took possession of this eighty (80) acres in question, under the lease in November. The land is used for corn, cotton, oats, alfalfa, and whatever you choose to put it in. There are only an old house and barn on the place. I do not live on it. After going into possession of the land I cleaned it up, cut sticks, raked, started to plow, started to fix it up for the crop. I was stopped the latter part of December. Mr. Reily had an injunction served on me from taking it in possession. I was enjoined from doing anything on this west half of the northeast quarter of Section 9, Township 10, Range 12. At the time I was stopped I was ready to break the land, had plowed one-half a day. The fore part of January I was served with a citation in the contempt proceedings mentioned in this matter. The citation was dismissed. Mr. Reily on the 4th day of this month (February) took possession of the

west half of the west half of this land. He took fences out, cut ditches, put up terraces. On the 19th of this month he commenced to plow this land and has plowed ten (10) or twelve (12) acres. I don't think he has plowed since Saturday. Corn should be planted by the 15th of next month. I was going to plant this forty (40) acres in corn.

Cross-Examination.

J. F. Atkenson farmed this land last year. I don't know whether he paid the rent to Wa-pe-com-e. I made lease October 18. I did not know before making the lease that Mr. Reily had a deed, or that he expected to take possession the first of the year. I received the original of this letter after I had taken the lease—after the application was put in. I did not tell the Indian Agency about the letter. I knew Reily claimed to own the land according to that letter. I received the letter but wouldn't say the exact date, it is dated October 12.

Letter is identified as Defendant's Exhibit 1. I received the original of that letter. There are no improvements on Reily's forty (40) acres of the land. I did not know that East had a lease of record at the time of my lease.

October 12th, 1930.

Mr. J. T. Craig, Shawnee, Okla.,

Dear Sir: I have been informed that you claim a lease on the west one-half of the west one-half of the Northeast one-quarter of Section Nine, Twp. Ten, Range Three east in this County.

This land belongs to me and was conveyed to me by the heir to same. You are notified not to attempt to take possession of this land under your supposed lease as no one has any right to same but the undersigned.

Respectfully,

Testimony of Charles W. Edmister for plaintiff. Charles W. Edmister called on behalf of plaintiff, duly sworn, testifies:

I am district farmer at the Shawnee Agency. I was served with an order of injunction in Mr. Reily's case. It was in

the county court and not to interfere with the possession of this land. I have been district farmer for eleven years and know Wa-pe-com-e. He lives on part of the land. During this time Wa-pe-com-e has lived in this neighborhood. He is a married man with a family. I knew his mother Wah-puck-we-che.

46

Cross-Examination.

Wa-pe-com-e lives on a part of the original allotment since the first of the year. His present wife's name is Okenaw. I am not able to say whether she was born in Mexico. She was one of the older girls. I don't think she has an allotment of her own. I do not know that they were all born in Mexico. Okama was one of the chiefs of Kickapoo Tribe in Mexico. I have heard he was trustee, along with Bentley, who received $215,000.00.

Testimony of Wah-pe-com-e for plaintiff.

Wah-pe-com-e called on behalf of plaintiff testified through an interpretor:

Direct Examination.

My name is Wah-pe-com-e, and I am 38 years of age. I live on my mother's allotment this side of Shawnee, and have lived there twelve years. I have a family and have been married nineteen years. Before I came here I was living with my mother in Old Mexico. I came to Oklahoma with my wife because I didn't want to stay in Mexico. When I first came back to Oklahoma I stopped at Wa-pe-caw's place. I came back to make Oklahoma my home. I remember when my mother died. I was here when she died. I went back to Mexico a short time after her death. Stayed there about one week. I went back to straighten out my mother's home and see about her stuff. She had a home there. After I returned from Mexico I went to the place where I was living. This is the only time I have been back since my mother's death. When I went down there after my mother's death I did not go to make Mexico my home.

Cross-Examination by Mr. Goode.

I lived in Coahuila but came here from Musquiz. I lived in Sonora two years. I remember when I went to Mexico in

1901. My present wife's name is Ok-e-ma. Her father's name was Os-ma-que and her mother's name Na-na-she. My wife's mother lived in Mexico at a village Naciemento. He had one of Bentley's daughter for a wife, and she is now living with him. I had an allotment. I sold it to Duchene,
who was agent at that time and was living here. Wash-
47 ington sold his allotment.

Mr. Goode: I believe the Court will take judicial notice that an Indian living here, selling his allotment, unless there is some reason for it.

Mr. Wiles: I think as a matter of fact they sold those allotments not by reason of any fact of residence or non-residence, it is under an Act of Congress, with the permission of the Department to authorize the sale under the regulations.

Mr. Goode: There is one paragraph in the appropriation bill that authorizes the sale of any Indian allotment land, only one I am familiar with, that is the one that is utilized in this case, not probably a half a dozen with the Secretary's approval.

I had brothers and sisters but they are all dead. They died way back before my mother. My father died several years before my mother. After my mother died I went back to Mexico. My mother didn't own any property there she just had a home. She had trunks and her clothes at Naciemento. People out there don't own their land separately. They own it all together. It belongs to just one tribe. That was the reason why I came back. I thought I didn't have any right over there. That was what made me come back.

J. A. Phifer, recalled on behalf of plaintiff.

Mr. J. A. Phifer, recalled by plaintiff testifies:

Plaintiff's Exhibit E is regulations to Indian Agents, approved by Secretary of Interior May 9, 1929, for leasing allotted and tribal lands for farming, grazing and business purposes, and the one under which our office leases Indian land. Plaintiff offered in evidence Exhibit E and particularly paragraph seven (7) on page two (2) thereof. Defendant
objected on ground rules and regulations only relate
48 to leasing trust lands and that the land in question is not held in trust at the time. Objection overruled and

exceptions allowed. Exhibit E, paragraph seven (7), admitted in evidence.

> Leases of inherited lands where the heirs have not been officially determined shall be made by the superintendent and limited to one year unless specific authority for a longer term has been granted by the Commissioner of Indian Affairs. Rentals shall be deposited to the credit of the estate pending the formal determination of the heirs. Thereafter, if the adult heirs who own a majority of interest in the land desire and agree to lease it, and one or two heirs, after proper explanation, refuse, the superintendent should report the facts to the Commissioner of Indian Affairs with the recommendation that he be authorized to sign for them.

Defendant's Exhibit 2 is a copy of a letter signed by Assistant Secretary John H. Edwards and on file in our office. It was offered and received in evidence as follows:

L 21500-25 W D W Jan. 5, 1926.

The Honorable The Secretary of the Interior.

Sir: On June 10, 1925, the Department returned without approval an oil and gas lease executed by Pa-ka-ta-mo-quah, sole heir of The-kah-qua-muck, deceased Mexican Kickapoo allottee No. 272, in favor of William L. Bowie. The Department took the view that under a provision in the Act of June 21, 1906 (34 Stat. L., 325-363), relative to adult Kickapoo and certain other Indians who were non-resident in the United States, leases by such non-resident owners were not subject to its supervision, adding that apparently under the terms of the statute leases by such adults cannot be made for a term in excess of five years.

Mr. Bowie through his attorney, George Paschal, requests that a reconsideration of the action of the Department in this lease and also asks approval of an oil and gas lease to Mr. Bowie from the heirs of Pah-kah-tuck, deceased Mexican Kickapoo allottee No. 274. In his letter of November 5, 1925, Mr. Paschal says that he agrees with the Department in the opinion of the law as to its jurisdiction over the class of lands affected by the Act of June 21, 1906, but disagrees with its views as to not taking action on the leases.

He invites attention to the fact that Mr. Bowie in obtaining these leases on Department form was acting in compliance with the requirements of this Department and went to considerable expense, time and trouble in obtaining the
49 signatures of the Indians to the Department form of lease. By their terms the leases become effective from the date of approval by the Secretary of the Interior, and Mr. Paschal urges that Department approval could in no way harm the parties to the leases, citing in connection therewith the practice of the Department in approving deeds executed by full-blood heirs of allottees of the Five Civilized Tribes after the Act of May 28, 1908, went into effect. The concluding paragraphs of this letter read:

"All that the lessee asks is that the Secretary of the Interior, acting as the arbiter for both parties to the lease contract, examine these leases and if he finds that the provisions therein contained are fair and just and no advantage taken by either party that he approve the leases and thus validate them and start them to running. The lessee has no objection to the Department supervising the payments to the lessors.

"We therefore respectfully request that in all fairness to all the parties to these lease contracts you accept the appointment as arbiter for the unrestricted adult parties and if you deem the lease contracts fair and just that you approve the same. And that for the minor interest and restricted adult interests in lease No. 10733, you exercise the jurisdictions and authority given you by the acts of Congress and the Regulations of the Department and if you find the lease contract entered into by Supt. A. W. Leech, for the minor lessor and the restricted adult heirs, fair and just, that you will approve the same."

The records of the Office show that Tho-kah-qua-muck died in the year 1904, leaving as her sole heir her unallotted daughter, Pa-ka-ta-mo-quah, resident of old Mexico. In the case of Johnson vs. the United States (283 Fed. Rep. 954), the court held in effect that restrictions were not removed from the original allotments of non-resident Indians of the tribes named in the Act of June 21, 1906, but that such Indians could lease their allotments without restrictions for a period of not to exceed five years. As to the removal of

restrictions from inherited land, it indicated that three things were necessary. First, that the deceased allottee was a member of one of the tribes named in the Act. Second, that the heir was also an adult member; and third, that he had been allotted land in his own right. The heir in this case is an adult nonresident Kickapoo Indian but has no allotment of her own right. All the facts with regard to the status of the heir were not brought out in Office letter of May 27, 1925, to the Department, and the Office therefore respectfully requests a reconsideration of this lease, and that it be approved as written. Attention is invited in this connection to a letter addressed to the Superintendent of the Shawnee Agency, approved by the Department December 21, 1925, holding in effect that the allotment of Pah-pe-ah, Mexican Kickapoo allottee No. 189 inherited by Ke-ah-nah, an unallotted nonresident Mexican Kickapoo Indian was under the supervision of this Department.

In the case of the lease from the heirs of Pah-kah-tuck, it appears that O-ke-mah, Mexican Kickapoo allottee No. 270 was found to be the sole heir. O-ke-mah was an adult who lived and died in old Mexico. Some of his heirs are living in old Mexico. O-ke-mah being an adult nonresident allottee, it would seem under the ruling in the case of Johnson vs. the United States, that the restrictions were removed from the land he inherited from Pah-kah-tuck and that the allotment is therefore no longer under the supervision of the Department. In order that the lease between the heirs and Mr. Bowie may become effective, it is recommended that it be approved in so far as this Department may have jurisdiction over the subject matter and that the Superintendent, be instructed to relinquish supervision over the lease and the land and to notify the parties to the lease accordingly.

All the papers are enclosed.

Respectfully,

(Signed) F. B. MERITT,
Assistant Commissioner.

Approved as recommended. Jan. 14, 1926.

(Signed) JOHN H. EDWARDS,
Assistant Secretary.

Plaintiff rests.

Defendant's Evidence.

Defendant offered, and there was received in evidence, certain letters written by J. A. Buntin, Superintendent of the United States Indian Agency, at Shawnee, Oklahoma, to the following effect, namely:

Mr. Goode: J. A. Buntin was Superintendent in charge of the Kickapoo Indians in 1913 and 1914, and we have heretofore agreed that the copy of letters written by Mr. Buntin, as appears in this report of the hearing before or on the Indian adoption bill 1914 may be used as originals.

It was further agreed that as there were a large number of names included in the letters that only the names of Wah-puck-we-che, mother of Wah-pe-com-e, and the name of Wah-pe-com-e, grantor herein, should be included.

Mr. Wiles: We have no objection as to the identity and authority of the persons writing it. The only objection we care to make is that it is incompetent, irrelevant and immaterial.

Which objection was overruled and the exception allowed.

Mr. Goode: We now offer a letter dated September 11, 1912, which reads as follows:

Department of the Interior,

United States Indian Service.

U. S. Indian Agency, Shawnee, Okla., September 11, 1912.

The First National Bank, Douglas, Ariz.

Gentlemen: In compliance with instructions from
51 my superior officer and an act of Congress approved August 24, 1912, which I quote as follows: "That the Secretary of the Interior be, and he is hereby, authorized and directed to cause to be sent to the First National Bank of Douglas, Arizona, checks payable to the order of the individual Indian owners who are members of the bank of Mexican Kickapoo Indians now resident in the Republic of Mexico, for and in the amount of all moneys known as lease money now on deposit with or in any manner under the control of the agents and officers of the Interior Department and all

like money due or becoming due or collectible by them prior to the first day of January, nineteen hundred and fourteen, and belonging to any of the said Mexican Kickapoo Indians." I respectfully transmit to you the following list of checks, drawn payable to the order of the individual owners who are members of the Mexican Kickapoo Indian Tribe residing in the Republic of Mexico, for proper delivery:

* * * * * *

No. 573, Wah-puck-we-che, female, aged about 59 years $30.00

* * * * * *

In order to aid you in making a correct delivery of these checks, we have indicated the sex and probable age of each Indian to whom said checks were drawn. I suggest that you use the utmost precaution in making proper delivery of these checks, as a wrong delivery of one of these checks may cause your bank much annoyance later on. You will understand that it is only my business to deliver these checks to your bank, and that the responsibility for the proper delivery to the Indian owners is entirely yours. I enclose you receipt in triplicate, which I will thank you to sign and return to this office with the least possible delay, so same may be forwarded with my accounts.

These checks are signed by me for the Indians and need only to be indorsed by the owners. For your information and that of the Indians, I enclose herewith a copy of Indian Office circular No. 652, which states that the indorsement on all Indian checks must be made by a clear thumb imprint, witnessed by two persons who can write, giving address and occupation of such witnesses.

Yours respectfully,

JOHN A. BUNTIN,
Superintendent and Special
Disbursing Agent.

Mr. Goode: We also offer in evidence, letter dated January 29, 1913, as follows:

Department of the Interior,

United States Indian Service.

U. S. Indian Agency, Shawnee, Okla., Jan. 29, 1913.

The First National Bank of Douglas, Douglas, Ariz.

Gentlemen: In compliance with the act of Congress, approved Aug. 24, 1912, I transmit herewith the following list of checks drawn payable to the order of the individual owners who are members of the Mexican Kickapoo Indian Tribe, residing in the Republic of Mexico, for proper delivery:

* * * * * *

No. 892, Wah-pe-com-e, male, 22 years.....$60.00
No. 531379, Wah-puck-we-che, female, aged about 59 years 18.16
No. 216, Wah-puck-we-che, female, aged about 59 years 9.03

* * * * * *

Kindly acknowledge receipt of these checks on the
52 form herewith, in triplicate, and return for my files.

JOHN A. BUNTIN,
Superintendent and Special
Disbursing Agent.

Commissioner Indian Affair, Washington, D. C.

Mr. Goode: We now offer in evidence letter dated March 20, 1913, as follows:

Shawnee, Okla., March 20, 1913.

The First National Bank of Douglas, Douglas, Ariz.

Gentlemen: The following is a copy of a telegram I have received from Ah-kis-kuck, one of the leading members of the Mexican Kickapoo Indians residing in the Republic of Mexico:

"El Paso, Tex., March 19, 1913.

"John A. Buntin, Superintendent, Shawnee, Okla.

"Send all lease money to First National Bank, Douglas, Ariz., at once. Ah-kis-kuck."

Since these Indians are evidently on their way to your place to get their money, aand I believe them to be in great need, I again return you the checks, together with a number of others representing lease money collected since mailing you these checks on the 29th of January. In sending you these checks I wish to refer to copy of act of Congress quoted you in my letter of March 8, 1913, and assure you that I do not wish to annoy your bank in any way, but believe it is my duty, since I have been informed that these Indians are on the way, to comply with this act of Congress and do all in my power to aid in carrying this law and the wish of Congress successfully into effect. On account of this act of Congress and the extremely needy condition of these Indians. I will thank you to aid me in every possible way in carrying into effect the law quoted you in my letter of March 8.

The following is a list of the names of the Indians, their sex, and approximate ages, which will aid you in identifying these Indians. If there is any further description which can be furnished by this office which would aid you in identifying these Indians, I would be pleased to furnish it if called on to so do.

* * * * * *

Wah-pe-com-e, male, 22 years old	$60.00
Wah-pe-com-e, male, 22 years old	32.55
Wah-puck-we-che, female, 59 years old	18.16
Wah-puck-we-che, female, 59 years old	9.03
Wah-puck-we-che, female, 59 years old	30.00

* * * * * *

Yours respectfully,

JOHN A. BUNTIN,
Superintendent and Special
Disbursing Agent.

Mr. Goode: We also offer in evidence letter dated August 18, 1913, as follows:

Shawnee, Oklahoma, August 18, 1913.

The First National Bank of Douglas, Douglas, Ariz.

Gentlemen: I hand you herewith for proper delivery
53 checks drawn to the order of Mexican Kickapoo Indians living in Mexico, covering receipts of lease money

for these Indians since the sending the last list of checks to you for said Indians. This list of checks is sent to you, as you know, to meet the requirements of the act of Congress approved August 24, 1912.

* * * * * *

Wah-pe-com-e, check No. 976	$82.80
Wah-puck-we-che, check No. 987	30.00
Wah-puck-we-che, check No. 988	5.20

* * * * * *

All drawn on the Treasurer of the United States, dated August 15, 1913.

Please sign and return the enclosed receipt, in tripilcate, and very much oblige,

Yours respectfully,

JOHN A. BUNTIN,
Superintendent and Special
Disbursing Agent.

Mr. Goode: We also offer in evidence, letter dated January 3, 1914, as follows:

Shawnee Indian Agency.

Shawnee, Okla., Saturday, Jan. 3, 1914.

The First National Bank, Douglas, Ariz.

Gentlemen: In compliance with instructions from the honorable Commissioner of Indian Affairs, under date of November 29, 1913, I respectfully return to you for proper delivery, checks for Mexican Kickapoo Indians residing in the Republic of Mexico.

These checks are to be delivered in accordance with the provision of the act of Congress, approved August 24, 1912, a copy of which provision has been furnished you.

I give you a list of the names and approximate ages of the Indians to whom these checks are to be delivered. However, you will not always be able to select the Indian from the name of the Indian or Indians may give you as being the

person to whom the check should be delivered. The reasons for this is that in many cases the name which was taken probably 23 or 24 years ago was not spelled in such a manner as to truly represent the sounds composing the name.

The following is a list of the names, ages, sex, and amounts:

* * * * * *

Wah-pe-come-e, age 23, male	$32.50
Wah-puck-we-che, age 60, female	30.00
Wah-puck-we-che, age 60, female	5.20

* * * * * *

I have indicated the age and sex after each name in order to aid you in identifying these Indians.

This letter is written to you in quadruplicate. Please acknowledge receipt of the checks on the bottom of this letter and return three copies to me to be used in my accounts.

I am respectfully,

JOHN A. BUNTIN,
Superintendent and Special
Disbursing Agent.

Mr. F. H. Reily called on behalf of defendant.

54 Mr. F. H. Reily called on behalf of defendant, duly sworn, testifies:

I am the defendant. I have a deed for forty (40) acres of the land described. The deed was executed by Wa-pe-com-e and wife on May 20, 1930, and recorded the same day. At the time of my purchase there was an outstanding conveyance of one-half the royalty interest in the land. That deed was executed February 9, 1920, and recorded on February 14, 1929. There was also a farm lease of record to J. R. Eastman for 1931. At the time I bought the land half the royalty was gone and possession was gone until January 31, 1931. There was also an option to purchase of record to Ira L. Couch. It was dated October 22, 1929. About the first of the year or immediately thereafter I went out on the land in person and went over it several times. I did everything any person could do and took possession, there
55 is no house on it or anything, and made some improvements upon it. I leased the land. Mr. Craig

interfered with my possession. At that time I brought suit in the District Court of Pottawatomie County, Oklahoma, against Eggers as Superintendent of the Indian Agency, Mr. Craig and Edmister the Indian farmer and enjoined them with interferring with me in the possession of the land. I obtained a temporary order and later on no answer was filed, and I received a permanent injunction. I then brought suit in the Superior Court of Pottawatomie County, against Wa-pe-com-e and his wife to quiet title and determine heirship to this land, and obtained judgment quieting title and determining heirship. That is the judgment attached to my answer in this case. The citation in the injunction proceedings was dismissed. Exhibit 2 is carbon copy of permanent injunction obtained against J. F. Craig, Charles Eggers and Charles W. Edmister, and is as follows:

State of Oklahoma, Pottawatomie County—ss.

In the District Court thereof.

F. H. Reily, Plaintiff, vs. J. T. Craig, Charles Eggers and Charles W. Edmeister, Defendants. No. 13749.

Permanent Injunction.

Now on this the ..... day of December, 1930, the court being in due and lawful session and the defendants and each of them having been duly and lawfully summoned herein, as by law provided, and said defendants and each of them having failed to appear or plead in said action, are in default and are hereby adjudged to be in default.

The court being fully advised in the premises finds
56 that on the 6th day of August, 1894, the United States Government allotted to one Wah-puck-we-che, at that time an Indian in the Kickapoo Reservation, the West One-Half (W½) of the Northeast Quarter (NE¼) of Section Nine (9), Township Ten (10) North, Range Three (3) East of the Indian Meridian, in the then Oklahoma Territory, now the State of Oklahoma, containing eighty (80) acres of land.

The court further finds that Wah-puck-we-che is dead and that at the time of her death she was a resident of the Republic of Mexico; that she was an adult Kickapoo Indian and while she resided in Mexico she affiliated with the Mexican-Kickapoo Indians.

The court further finds that she died intestate and left as her sole surviving heir, Wa-pe-come-e, and that the said Wa-pe-com-e established his residence in the Republic of Mexico in the year 1906, prior to the death of his mother and that he resided there continuously for a period of more than ten years and that he was a member of the Kickapoo Indian Tribe and affiliated with said tribe.

The court further finds that the said Wa-pe-com-e was allotted, under certificate No. 42, by the United States Government a certain tract of land described as the West One-half (W½) of the Southwest Quarter (SW¼) of Section Fourteen (14), Township Twelve (12), Range One (1) East, located in Oklahoma County, State of Oklahoma.

The court further finds that on the 20th day of May, 1930, for a good and valuable consideration, the said Wa-pe-com-e as the sole and only heir of his mother, Wah-puck-we-che, sold and conveyed to the plaintiff herein, the West One-Half (W½) of the West One-Half (W½) of the Northeast Quarter (NE¼) of Section Nine (9), Township Ten (10) North, Range Three (3) East of the Indian Meridian, same being the original allottment allotted to Wah-puck-we-che, his mother.

The court further finds that the said plaintiff is the sole owner of said land by reason of said conveyance and that he went into possession thereof and that he is entitled to retain possession thereof as against the defendants or either of them.

The court further finds that the defendant, Charles
56 Eggers, is Superintendent of the Indian Agency at Shawnee, Oklahoma, and as such Superintendent has entered into a lease contract of said land with the defendant J. T. Craig and the defendant said J. T. Craig is attempting to take possession of said land and to deprive the plaintiff of his right of possession.

The court further finds that by reason of the premises that the United States Government has no authority over said land and that said land is unrestricted and was subject to be conveyed by the said Wa-pe-com-e without any interference upon the part of the said Charles Eggers or the said Charles W. Edmeister.

The court further finds that the said plaintiff is entitled to a permanent injunction enjoining the said defendants and each of them with interferring with him in his right of possession and control over said land.

It is therefore ordered, adjudged and decreed that you, the said J. T. Craig, Charles Eggers and Charles W. Edmeister are hereby permanently enjoined from going upon the West One-Half (W½) of the West One-Half (W½) of the Northeast Quarter (NE¼) of Section Nine (9), Township Ten (10), Range Three (3) East of the Indian Meridian, or interferring with the said plaintiff in his possession and control of said land or any part thereof.

It is further ordered, adjudged and decreed that the title to said land be, and the same is hereby confirmed in the said plaintiff.

It is further ordered that the plaintiff recover of and from the defendants and each of them, all costs in this behalf expended.

.....
Judge of the District Court.

O. K. ....., Attorney for Plaintiff.

O. K. ....., Attorney for Defendants.

Cross-Examination.

58 I rented the land about the first of February, 1931, and I took as much possession of the land as a man can take. I did this as soon as Atkeson's lease was up. I went out there about January 1. The royalty conveyance did not show on Mr. Phifer's records. I don't know whether it was approved by the Secretary or not. The lease I mentioned was signed by Wa-pe-com-e and J. R. Ephland. The purchase option was signed by Wa-pe-com-e. It does not show approval by the Secretary or the Agency. I took a deed to this land from Wa-pe-com-e and wife on May 20, 1930, and recorded it the same day. Ma-ka-se-a and Tom Johnson made affidavits at the time. The deed and affidavits were made and executed in my office before my stenographer. Ma-ka-se-a and Tom Johnson were not paid any money for making the affidavits. I did not know Wah-puck-we-che. I learned she died a couple of years before I took the deed. She was merely here on a visit from Mexico, had her home and personal property there. I bought out Ephland's lease from him.

Defendant rests.

Thereupon the court made the following announcement:

The Court: There is no question but what she was a resident of Mexico and the court will have to find she was a resident of Mexico at that time, and the court will find he has been a resident of Oklahoma for twelve (12) years.

Thereupon the cause was argued by counsel for plaintiff and defendant and at the conclusion thereof the court denied plaintiff's application for an injunction in this cause, and to which action and ruling by the court the plaintiff excepted at the time.

State of New Mexico, County of Santa Fe—ss.

I, Nettie V. Belles, do certify that I am official court reporter for the United States District Court for the District of New Mexico, and that I was in attendance on a term of court held at Oklahoma City, Oklahoma, during the
59 month of February, 1931, when Judge Colin Neblett was presiding over such term of court, under assignment of Hon. Robert E. Lewis, Senior Circuit Judge, and that I acted as reporter during the trial of cause No. 1192, Equity, United States of America vs. F. H. Reily.

I further certify that the foregoing 40 pages of typewritten matter is a true and complete transcript of my notes taken at such hearing.

I further certify that I am not related to any of the parties, nor interested in the result thereof.

NETTIE V. BELLES, Court Reporter.

Santa Fe, New Mexico, July 30, 1931.

Thereupon, on the 25th day of February, 1931, the court signed and caused to be filed in this cause the following Journal Entry of Judgment herein, viz.:

Decree.

This cause came on to be heard at this term and was argued by counsel, and thereupon the following findings of fact and conclusions of law were made and entered:

Findings of Fact.

1. The court finds that the West One-Half (W½) of the Northeast Quarter (NE¼) of Section Nine (9), Township Ten (10), Range Three (3) East of the Indian Meri-
60 dian, containing eighty (80) acres more or less, located in Pottawatomie County, Oklahoma, was allotted to Wah-puck-we-che, as a member of the Kickapoo Tribe of Indians and that her allotment number was 225.

2. That the said allottee died in January, 1929, and left as her sole and only heir, Wa-pe-com-e, her son, and the said Wa-pe-com-e inherited said land.

3. That said Wah-puck-we-che and Wa-pe-com-e left Oklahoma and went to old Mexico in the year 1903 and each of said persons were adults and resided there many years and after the passage of the act of June 21, 1906. That each of said Indians became non-residents of the United States within the meaning and purview of the Act of June 21, 1906.

That the said Wah-puck-we-she returned to the United States in the year 1927 and died in Oklahoma, but was a resident of old Mexico at the date of her death.

4. That the said Wa-pe-com-e returned to the United States about the year 1920 and has resided in the United States since said date. That the said Wa-pe-com-e as the sole heir of Wah-puck-we-che deceased, conveyed the West One-Half (W½) of the West One-Half of the Northeast Quarter (NE¼) of Section Nine (9) Township Ten (10) North, Range Three (3) East of the Indian Meridian, containing forty (40) acres, by warranty deed dated the 20th day of May, 1930.

That Charles Eggers, United States Superintendent of the Shawnee Agency entered into an agricultural lease with J. T. Craig on the 8th day of October, 1930, leasing said land on behalf of the undetermined heirs of the said Wah-puck-we-che, for the year 1931. That the said F. H. Reily filed suit in the District Court of Pottawatomie County, and obtained a permanent injunction against the said J. T. Craig, Charles Eggers, United States Superintendent and Charles W. Edmeister, United States Indian Farmer, restraining and

enjoining them from interferring with said Reily's possession in and to said forty acres of land.

That thereafter he filed suit in the Superior Court of Pottawatomie County and obtained a judgment quieting his title in and to said land against any claims of the said
61 Wa-pe-com-e. That thereafter this suit was brought in this court to restrain the said Reily and his tenants from occupying said land or interferring with the use and occupation thereof.

Conclusions of Law.

1. The court finds as a matter of law that neither of the judgments rendered in the State court and plead by the said F. H. Reily, or the proceedings had there are barred by this action, or in any way prevent this court from entertaining this suit.

2. That upon the death of Wah-puck-we-che the said Wa-pe-com-e became vested with full power and right to convey any and all of said land and to pass good title thereto, free, clear and discharge of and from any supervision and control by the United States, and the conveyance made by the said Wa-pe-com-e to F. H. Reily, conveyed good title to the West One-Half of the West One-Half of the Northeast Quarter of Section Nine, Township Ten North, Range Three East of the Indian Meridian.

It is therefore by the court, considered, ordered and adjudged, that the plaintiff and those for and on whose behalf this action was brought, have no right, title, interest or claim in or to said land or any part thereof, and that this Bill be dismissed. Exceptions allowed the complainant.

COLIN NEBLETT, Judge.

It is hereby stipulated and agreed, by and between the parties in the above action, through their respective attorneys, that the above and foregoing statement of the evidence in narrative form contains all the evidence material to the plaintiff's assignments of errors and all the exceptions of the parties upon the trial of the above action in the United States District Court for the Western District of Oklahoma, and

that the same be approved by the court as the full,
62 true and complete statement of the evidence in this cause, and the same be lodged and filed with the Clerk of this Court upon such approval.

Dated, Oklahoma City, Oklahoma, December 23rd, 1931.

WILLIAM EARL WILES,
Assistant United States Attorney,
Attorney for Plaintiff.

MARK GOODE,
CHAS. E. DEICKER,
JOHN L. GOODE,
Attorneys for Defendant.

Service of the foregoing accepted this 23rd day of December, 1931, and further notice of time or place for the examination thereof, or for the presentation thereof for approval are waived, and we consent to the approval and filing thereof as a full, true and condensed statement of the evidence in said cause.

Witness my hand this 23 day of December, 1931.

MARK GOODE,
Attorney for Appellee.

Upon the foregoing stipulation and consent of the attorneys for the respective parties herein, it is hereby ordered, that the foregoing is a full, true and complete statement of the evidence in narrative form of said District Court in the above action, containing all the evidence material to the plaintiff's assignments of errors and all the exceptions of the parties upon the trial, and I approve the same and direct the same be filed as the approved statement of the evidence in said cause.

Dated, Jan. 2nd, 1932.

COLIN NEBLETT,
United States District Judge,
Trial Judge.

Endorsed: Filed in District Court on Jan. 13, 1932.

Petition for Appeal.

To the Honorable Edgar S. Vaught, District Judge:

The above named plaintiff, the United States of
63 America, feeling aggrieved by the decree rendered and entered in the above entitled cause on the 25th day of February, A. D. 1931, does hereby appeal from said decree to the Circuit Court of Appeals for the Tenth Circuit, for the reasons set forth in the assignment of errors filed herewith, and prays that their appeal be allowed and that citation be issued as provided by law, and that a transcript of the record proceedings and document upon which said decree was based, duly authenticated be sent to the United States Circuit Court of Appeals for the Tenth Circuit, under the rules of such Court in such cases made and provided.

And your petitioner further prays that the proper order relating to the required security to be required be made.

THE UNITED STATES OF AMERICA,
By ROY ST. LEWIS,
United States Attorney,

WILLIAM EARL WILES,
Assistant United States Attorney,
Solicitors for Plaintiff.

Appeal allowed. No bond required of the United States of America. Plaintiff given ninety (90) days in which to prepare and file bill of exceptions, transcript and record on appeal.

HC EDGAR S. VAUGHT, Judge.

Endorsed: Filed in District Court on May 15, 1931.

Assignment of Errors.

Now comes the plaintiff in the above entitled cause,
64 the United States of America, and files the following assignment of errors upon which it will rely upon the prosecution of the appeal in the above entitled cause, from the decree made by this Honorable Court on the 25th day of February, A. D. 1931.

(1)

That the United States District Court for the Western District of Oklahoma erred in finding and determining the heirship of Wah-puck-we-che and that Wah-pe-com-e was her sole and only heir, because such power and function is vested by Acts of Congress solely in the Secretary of the Interior.

(2)

That the United States District Court for the Western District of Oklahoma erred in its findings and conclusions of law entered herein that the defendant had power or could in any manner litigate with plaintiff the title and right to the custody and control of the lands involved in this action prior to a legal determination of the heirship of Wah-puck-we-che, the allottee thereof, by the Secretary of the Interior as provided for by Acts of Congress in such matters.

(3)

That the United States District Court for the Western District of Oklahoma erred in finding that Wah-pe-com-e was non-resident in the United States within the meaning
65 and purview of the Act of June 21, 1906.

(4)

That the United States District Court for the Western District of Oklahoma erred in its conclusions of law herein in concluding as a matter of law that Wah-pe-com-e upon the death of Wah-puck-we-che became vested with the title to the lands involved herein with right and power in him to convey the same free from the control of the plaintiff, and that the conveyance by him to the defendant on May 20th, 1930, was a valid conveyance of said lands.

(5)

That the United States District Court for the Western District of Oklahoma erred in its conclusions of law and order entered herein that the plaintiff, the United States of America, and those for or on whose behalf this action was brought, have no right, title, interest or claim in and to the lands in this action.

(6)

That the United States District Court for the Western District of Oklahoma erred in finding the facts in favor of the defendant and against the plaintiff, because such findings are not supported by the evidence in the case but are contrary to the evidence and the weight thereof in the case.

(7)

That the United States District Court for the Western District of Oklahoma erred in its conclusions of law in favor of the defendant because the same are contrary to the law in and applicable in the case.

(8)

That the United States District Court for the Western District of Oklahoma erred in dismissing the bill of complaint of plaintiff.

(9)

That the United States District Court for the Western District of Oklahoma erred in denying the relief prayed for by plaintiff in its bill of complaint, and in refusing to
66 grant plaintiff relief by injunctive process against defendant as in said bill prayed for.

(10)

That the United States District Court for the Western District of Oklahoma erred in not making and entering its findings and conclusions of law in favor of the plaintiff under the law and evidence in the case.

(11)

The United States District Court for the Western District of Oklahoma erred in its decree because upon its face it shows it to have been entered for the wrong party and should have been made and entered for the plaintiff.

Wherefore, the Appellant prays that said decree be reversed and that said District Court for the Western District of

Oklahoma be ordered to enter a decree reversing the decision of the lower court in said cause.

THE UNITED STATES OF AMERICA,
By ROY ST. LEWIS,
United States Attorney,

WILLIAM EARL WILES,
Assistant United States Attorney,
Attorneys for Appellant.

Endorsed: Filed in District Court on May 15, 1931.

Stipulation in Lieu of Praecipe.

67 It is hereby stipulated by and between counsel for the respective parties hereto that the transcript of the record on appeal herein shall consist of the following:

(1) Bill of Complaint with filing date thereof.

(2) Order of the Court for temporary restraining order and the Marshal's return thereon, with filing date.

(3) The chancery subpoena with the Marshal's return thereon with filing date.

(4) Answer of F. H. Reily, together with exhibits thereto attached, and filing date thereof.

(5) Order of Court denying temporary injunction and order setting case for trial.

(6) Decree of the Court and filing date thereof.

(7) Petition for appeal and order of allowance of appeal, with filing date thereof.

(8) The assignments of errors with filing date thereof.

(9) Notice of appeal and acceptance thereof, and filing date.

(10) The citation and acceptance thereof, with filing date.

(11) The approved narrative statement of the evidence and filing date.

(12) The various orders of the Court extending the times in which to prepare and file narrative statement of the evidence, together with the various orders of the Court extending the times in which to file and docket the case in the Circuit Court of Appeals.

(13) This stipulation in lieu of praecipe [redacted] filing date.

(14) The Clerk's certificate to transcript of record.

Said transcript so prepared to be transmitted to the Circuit Court of Appeals for the Tenth Circuit, in pursuance to the appeal heretofore taken in this case, and to include
68 the foregoing items.

Dated January 14th, 1932.

WILLIAM EARL WILES,
Assistant United States Attorney for the Western District of Oklahoma and Attorney for the Plaintiff.

MARK GOODE,
CHARLES E. DIERKER,
JOHN L. GOODE,
Attorneys for Defendant.

Endorsed: Filed in District Court on Jan. 15, 1932.

(Clerk's Certificate to Transcript.)

United States of America, Western District of Oklahoma—ss.

I, Thedore M. Filson, Clerk of the District Court of
69 the United States for the Western District of Oklahoma, do hereby certify the above and foregoing to be a full, true and complete transcript of the pleadings, record and proceedings in said court in case No. 1192, Equity, wherein The United States of America, is complainant, and F. H. Reily, is defendant, as full, true and complete as the said transcript purports to contain and as called for by the praecipe for transcript of the record above set forth.

I further certify that the original citation is attached hereto and returned herewith.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Oklahoma City, in said District, this 26th day of January, A. D. 1932.

THEODORE M. FILSON, Clerk,
By GRACE G. BUTLER, Deputy.

Filed Jan. 28, 1932. Albert Trego, Clerk.

And thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Tenth Circuit, viz:

Appearances

For appellee

The clerk will enter my appearance as counsel for the appellee.

MARK GOODE,
Shawnee, Okla.
CHARLES E. DIERKER,
Shawnee, Okla.
JOHN L. GOODE,
Shawnee, Okla.

Filed Feb. 5, 1932. Albert Trego, clerk.

Order of submission

Forty-fifth day, April term, Wednesday, September 7th, A.D. 1932. Before Honorable Robert E. Lewis, Honorable John H. Cotteral, and Honorable Orie L. Phillips, Circuit Judges.

612

UNITED STATES OF AMERICA, APPELLANT

vs.

WALLACE ESTILL ET AL., APPELLEES

Appeal from the District Court of the United States for the Western District of Oklahoma.

613

UNITED STATES OF AMERICA, APPELLANT

vs.

F. H. REILY, APPELLEE

Appeal from the District Court of the United States for the Western District of Oklahoma.

These causes came on to be heard and by agreement of counsel were argued together, William Earl Wiles, Esquire, appearing for appellant in both cases; Marke Goode, Esquire, appearing for appellees; Wallace Estill et al.; and F. H. Reily, appellee, appearing pro se.

Thereupon these causes were submitted to the court..

Opinion

No. 613, September term, 1932

(December 23, 1932)

Mr. William Earl Wiles, assistant United States attorney (Mr. Herbert K. Hyde, United States attorney, was with him on the brief), for appellant.

Mr. F. H. Reily (Messrs. Goode, Dierker & Goode and Messrs. Reily & Reily were with him on the brief), for appellee.

Before LEWIS, COTTERAL and PHILLIPS, Circuit Judges.

LEWIS, Circuit Judge, delivered the opinion of the court.

The issue of law that we decided this day in case No. 612, United States v. Wallace Estill, et al., is again presented in this case. In this case, as in that one, the United States sues as trustee, named as such in the patent issued under the General Allotment Act of February 8, 1887, 24 Stat. 388. The eighty acres therein described as situate in the Territory (now State) of Oklahoma was allotted to Wah-puck-we-che, a Kickapoo Indian, who later went to the Republic of Mexico in 1903, took her son, Was-pe-com-e, of tender years with her, and resided there with other Kickapoos under tribal customs. In 1927 or 1929 she returned to Oklahoma and died there. Her son was his mother's only heir. When he grew up, he returned to Oklahoma, where he remained. After his mother's death he went to Mexico and brought away her household goods and personal belongings. He was an allottee of Oklahoma lands in his own right. In May, 1930, he sold forty acres of his mother's allotment to appellee, Reily, for $1,500.00 "and other good and valuable consideration." Notwithstanding this, appellant's local representatives gave a lease on the whole eighty acres for the calendar year 1931, and dispute arose between Reily and their tenant over possession of the forty acres that Reily had purchased. Reily obtained a decree in the State court confirming his title and enjoining interference with his possession, by appellant's local representatives and their tenant. They ignored the suit against them and the injunctive order. Then the United States brought this suit to enjoin Reily's interference with the asserted right of the local representatives to lease the forty acres and the claimed right of their tenant to exclusive possession. The bill was dismissed on final hearing. Applying the act of June 21, 1906, quoted in the Estill case, to the facts of this case, which are not substantially different from the facts in United States v. Estill, supra, the decree appealed from should be affirmed. It is so ordered.

Decree

Thirty-eighth day, September term, Friday, December 23rd, A.D. 1932.

Before Honorable Robert E. Lewis and Honorable Orie L. Phillips, Circuit Judges.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Oklahoma and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court, that the decree of the said District Court, in this cause be, and the same is hereby, affirmed.

No. 613

In the United States Circuit Court of Appeals for the Tenth Circuit

UNITED STATES OF AMERICA, APPELLANT

vs.

F. H. REILY, APPELLEE

Petition for Rehearing

Comes now the appellant herein, the United States of America, by their attorneys, Herbert K. Hyde, United States attorney for the Western District of Oklahoma, and William Earl Wiles, assistant United States attorney, and respectfully petitions this honorable court to vacate and set aside the decision and opinion of this court rendered herein on the 23rd day of December 1932, and to grant to appellant a rehearing of this cause, and that the same may be re-argued by counsel, and for reasons therefor respectfully shows to the court the following:

(1)

This court in said decision on page 2 thereof says:

"Applying the act of June 21, 1906, quoted in the Estill case, to the facts of this case, which are not substantially different from the facts in United States v. Estill, supra, the decree appealed from should be affirmed."

(2)

We most respectfully believe the court has overlooked an important and decisive difference between the evidence in this case and that of United States v. Estill, mentioned.

It is true that Wah-puck-we-che, the allottee, in this case, and Mah-no-ne-mah, the allottee in the Estill case, were both non-resi-

dents in the United States. In this case Wah-pe-com-e was the heir of Wah-puck-we-che and for a period of time up to 1920 prior to her death—1920—was a non-resident himself, but at the time of her death, he was not non-resident. In the Estill case I-nesh-kin, as surviving widow of Mah-no-ne-mah, inherited a one-half share in his lands, and she at the time and for some time thereafter was non-resident in the United States. Upon her death, some of her remote heirs—part of the Johnson children—conveyed their inherited interests. It will thus be seen that I-nesh-kin was vested with an inherited interest while also non-resident. In this instant case, Wah-pe-come-e during the period of his non-residence possessed no inherited interest in his mother's allotment because she was living during all that time, and as said in 18 Corpus Juris, page 862:

"No one can be an heir of a living person; and, before the death of the ancestor, an expectant heir has no interest or estate in, or rights or standing as to property which he may subsequently inherit."

Note 94, citing in re Barnes, 47 Okla. 117, 120, 147 Pac. 451. His only interest became vested in him at his mother's death, and he was not at that time or any time since nonresident in the United States.

We respectfully believe these differences in the facts in these two cases make an essential difference in applying the act of June 21, 1906. It seems to us that there should be a concurrence of an inherited interest with nonresidence—not necessarily coinciding in time with each other—but nevertheless while nonresident—in order to remove the restrictions under said act.

Wherefore, petitioner most respectfully prays this honorable court to grant a rehearing in this cause, and to permit the same to be re-argued by counsel, and in the meantime that the mandate herein be stayed.

Respectfully submitted.

HERBERT K. HYDE,
United States Attorney,
WILLIAM EARL WILES,
Assistant United States Attorney,
Attorneys for Petitioner.

STATE OF OKLAHOMA,
Western District of Oklahoma, ss:

William Earl Wiles, of lawful age, being first duly sworn, does hereby certify that he is attorney for petitioner herein, and that this petition is made in good faith and not for the purpose of vexation or delay.

WILLIAM EARL WILES.

Subscribed and sworn to before me this 17th day of January, 1933.

GLENN H. GRUBB,
Deputy Clerk of United States District Court,
Western District of Oklahoma.

(Indorsed:) Filed Jan. 21, 1933. Albert Trego, clerk.

Order

Fourteenth day, January term, Tuesday, January 24th, A. D. 1933.

Before Honorable Robert E. Lewis, Circuit Judge, Honorable Orie L. Phillips, Circuit Judge, and Honorable Tillman D. Johnson, District Judge.

This cause came on to be heard on the petition of appellant for a rehearing herein and was submitted to the court.

On consideration whereof, it is now here ordered by the court that the said petition be and the same is hereby denied.

(On February 4th, 1933, the mandate of the United States Circuit Court of Appeals, in accordance with the opinion and decree of said court, was issued to the United States District Court and on February 8th, 1933, the receipt of the clerk of the said District Court for said mandate was received and filed.)

Clerk's certificate

United States Circuit Court of Appeals, Tenth Circuit

I, Albert Trego, clerk of the United States Circuit Court of Appeals for the Tenth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Western District of Oklahoma, as prepared and printed under the rules of the United States Circuit Court of Appeals for the Tenth Circuit, under the supervision of its clerk, and full, true, and complete copies of all the pleadings, record entries, and proceedings, including the opinion (except full captions, titles, and endorsements omitted in pursuance of the rules of the Supreme Court of the United States), had and filed in the United States Circuit Court of Appeals for the Tenth Circuit in a certain cause in said Circuit Court of Appeals wherein United States of America was appellant and F. H. Reily was appellee, no. 613, as full, true, and complete as the originals of the same remain on file and of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Tenth Circuit, at office in the city of Denver, Colorado, this 3rd day of April, A. D. 1933.

ALBERT TREGO,
Clerk of the United States Circuit Court of Appeals,
Tenth Circuit.

U. S. GOVERNMENT PRINTING OFFICE: 1933

Supreme Court of the United States

Order allowing certiorari

Filed May 29, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1933